



DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 52

[NPS-WASO-32954; PPWOBSADC0; PPMVSCS1Y.Y00000]

RIN 1024-AE47

Visitor Experience Improvements Authority Contracts

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Visitor Experience Improvements Authority given to the National Park Service by Congress in Title VII of the National Park Service Centennial Act. This authority allows the National Park Service to award and administer commercial services contracts and related professional services contracts for the operation and expansion of commercial visitor facilities and visitor services programs in units of the National Park System.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Information Collection Requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the *Federal Register*. Therefore, comments should be submitted to OMB by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit your comments, identified by Regulation Identifier Number (RIN) 1024-AE47, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail to: Commercial Services Program, National Park Service, 1849 C Street NW Mail Stop 2410, Attn: VEIA Rule Comments, Washington DC 20240.

Instructions: All submissions received must include the words “National Park Service” or “NPS” and the RIN (1024-AE47) for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. The NPS will not accept bulk comments in any format (hard copy or electronic) submitted on behalf of others.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

Information Collection Requirements: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR-ICCO), 12201 Sunrise Valley Drive, Reston, VA 20191 (mail); or phadrea_ponds@nps.gov (email). Please include “1024–AE47” in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Kurt Rausch, Acting Chief of Commercial Services Program, National Park Service; (202) 513-7202; kurt_rausch@nps.gov. Questions regarding the NPS’s information collection request may be submitted to the NPS Information Collection Clearance Officer (ADIR-ICCO), 12201 Sunrise Valley Drive, Reston, VA 20191 (mail); or phadrea_ponds@nps.gov (email). Please include “1024–AE47” in the subject line of your email request.

SUPPLEMENTARY INFORMATION:

Background

NPS Authorities to Contract for Commercial Visitor Services.

The National Park Service (NPS) enters into concession contracts with other entities to provide commercial visitor services in over 100 units of the National Park System. Examples of such services include lodging, food, retail, marinas, transportation, and recreation. NPS concession contracts generate approximately \$1.6 billion per year in gross receipts, while returning approximately \$133 million in franchise fees to the NPS. What was commonly known as the National Park Service Concession Policies Act of 1965 (1965 Act), Pub. L. 89-249, provided the first comprehensive statutory authority for the NPS to issue concession contracts. Since the repeal of the 1965 Act, concession contracts have been awarded under the Concessions Management Improvement Act of 1998 (1998 Act), 54 U.S.C. 101901–101926. NPS regulations in 36 CFR part 51 govern the solicitation and award of concession contracts issued under the 1998 Act and the administration of concession contracts issued under the 1965 and 1998 Acts.

The National Park Service Centennial Act (Centennial Act), 54 U.S.C. 101931–101938, established the Visitor Experience Improvements Authority (VEIA) allowing the NPS to solicit, award, and administer commercial services contracts for the improvement, modernization, and expansion of commercial visitor facilities and visitor services programs in units of the National Park System. The VEIA supplements but does not replace the existing authority granted to the NPS in the 1998 Act to enter into concession contracts or any other existing NPS authorities to provide commercial visitor services in units of the National Park System. The VEIA is also separate from authorities granted under the Office of Federal Procurement Policy Act and Federal Acquisition Regulations.

Differences between VEIA and Concessions.

The VEIA is intended to provide additional tools to expand, modernize, and improve the condition of commercial facilities and visitor services using contracting

models that differ from and are in addition to the concession contracts used under the 1998 Act. These models include management agreements and percentage lease agreements (hereinafter referred to as percentage agreements) found in the private hospitality industry, as well as other contract models that are consistent with the VEIA. These models may be used to provide a variety of commercial visitor services such as lodging, food, retail, marinas, transportation, camping and recreation. The use of industry-standard models may allow and encourage additional companies to bid on new hospitality business opportunities in parks. The VEIA also provides flexibility in the solicitation process. For example, the 1998 Act requires the NPS to consider specific evaluation factors, while the VEIA does not dictate such criteria. This flexibility may allow businesses to more effectively respond to and be evaluated on how they will meet visitor needs for the services being offered. The flexibility of the VEIA also provides the potential to streamline the solicitation process to reduce the burden on businesses submitting proposals, including the ability to negotiate on the terms of the contract and greater ability to modify or adjust operations under existing contracts to reflect changes at the park or different visitor expectations during the contract term. Finally, there are differences in the revenue management and fee structure for contract models that may be used under the VEIA. Under a management agreement, the NPS would pay the operator a base fee plus an incentive fee. The incentive fee would be paid when the operator meets facility maintenance, operating, and visitor service goals. All other revenue would go to the NPS to directly fund operations and improvements. Any increased financial return to the NPS would be used to fund updates to real and personal property and provide commercial visitor services. Under a percentage agreement, the operator would retain the revenue and pay a fee to the NPS. This would be similar to the concession contract model, although the fee structure under a percentage agreement would include payment of a base fee plus a percentage of revenue.

In addition to commercial services contracts, the VEIA authorizes the NPS to enter into professional services contracts related to those commercial services contracts. These may include consulting contracts with hospitality and asset management experts for services such as developing requests for proposals, condition assessments, and operational and financial analysis.

Implementation of the VEIA.

The Centennial Act requires the NPS to promulgate regulations appropriate for implementation of the VEIA. 54 U.S.C. 101936. The Centennial Act also states that the VEIA expires seven years after the enactment of the law. 54 U.S.C. 101938. The NPS has consulted with hospitality industry experts, including academic leaders, hospitality asset management companies, hotel owners and operators, and state agencies to assess current visitor service contract models and best practices in the hospitality industry. The NPS engaged a nationally recognized hospitality management consulting and asset management firm to assist the NPS with developing contracts, requests for qualifications and proposals, and solicitation, contract management, and accounting practices.

The NPS learned that hospitality and other industry-standard practices for commercial services contracts, like those authorized in VEIA, typically include the use of a private bank account to hold the owner's funds for expenditure by the operator. To be consistent with applicable fiscal law, however, the NPS will not deposit Federal funds into a private bank account when implementing VEIA. The proposed rule contains alternative funding guidelines to mimic the benefits afforded the industry-standard commercial services contracts as VEIA intended, while still complying with applicable fiscal law.

The NPS has evaluated certain visitor services currently provided under concession contracts that may be suitable for VEIA commercial services contracts.

The NPS will provide information about the VEIA on the website for the NPS

Commercial Services Program at <https://www.nps.gov/orgs/csp/index.htm>.

Proposed Rule.

The proposed rule includes requirements and limitations applicable to the VEIA that are directed by the Centennial Act. These requirements and limitations would be promulgated in a new part 52 of title 36 CFR. They are explained below.

The NPS may only issue a commercial services contract under the VEIA if the Secretary of the Interior, in this proposed rule acting through the NPS, determines that the contract will expand, modernize, and improve the condition of commercial visitor facilities and the services provided to visitors. Commercial services contracts issued by the NPS under the VEIA must meet two additional criteria. First, the contract must be necessary and appropriate for public use and enjoyment of the National Park System unit where it is located. Second, the contract must be consistent with the preservation and conservation of the resources and values of the unit. These two criteria also must be met for concession contracts.

The NPS may not award contracts under the VEIA for the provision of certain outfitter and guide services, or to authorize the provision of facilities or services for which the Secretary, in this proposed rule acting through the NPS, has granted an existing concessioner a preferential right of renewal under the 1998 Act. The NPS may award contracts under the VEIA without regard to Federal laws and regulations governing procurement by Federal agencies, except for those laws and regulations related to Federal Government contracts that govern working conditions and wage rates and any civil rights provisions otherwise applicable thereto.

The NPS must award VEIA commercial services contracts through a competitive selection process, and must publicly solicit proposals for each commercial services contract before awarding such contract. The NPS must prepare a request for proposals and publish notice of its availability. The NPS may not award a commercial services

contract under the VEIA for a term greater than 10 years. The person or entity awarded a contract under the VEIA will not receive leasehold surrender interest in capital improvements (as those terms are defined by the 1998 Act at 54 U.S.C. 101915) constructed under the terms of the contract.

Other than these basic requirements, the VEIA authorized the NPS to design a flexible process for the solicitation and evaluation of proposals. The NPS plans to adjust this process for solicitation and evaluation of proposals to reflect hospitality and other industry practices, accounting for any necessary NPS-specific conditions. In addition to the statutory requirements governing the VEIA, the proposed rule includes defined terms and other provisions that will govern the administration of contracts under the VEIA. These provisions explain solicitation, selection, and award procedures, including information about how the Director will publicly solicit proposals for a commercial services contract and how the Director will evaluate proposals. Other provisions govern the terms of the contracts themselves, including provisions related to termination, rate approval, assignments of contracts, and general funds management. The proposed rule also addresses access to information and records held by operators related to their performance under commercial services contracts and by contractors related to their performance under professional services contracts.

Opportunity to Comment.

The NPS is interested in receiving comments from the public on both the proposed rule and the use of the VEIA. In particular, the NPS is interested in responses to the following questions:

- 1) Does the bid process outlined in the proposed rule provide sufficient flexibility to allow bidders to suggest new services not anticipated by the NPS?
- 2) Does the bid process outlined in the proposed rule provide sufficient opportunity to negotiate contract terms?

- 3) What other best practices in hospitality contract models or bid processes might the NPS adopt to achieve the goals of expanding, modernizing and improving visitor services and the condition of commercial facilities?
- 4) Where does the NPS need to expand, modernize and improve the condition of commercial facilities and visitor services?
- 5) How should the NPS use the VEIA to improve the visitor experience?

Compliance with Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant at the proposed rule stage and will make a separate significance determination at the final rule stage.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that agencies must base regulations on the best available science and the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA).

This proposed rule would not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and initial regulatory flexibility analyses found in the report entitled

“Visitor Experience Improvements Authority (VEIA) Proposed Rule Regulatory Assessment (RA) and Initial Regulatory Flexibility Analysis (IRFA)” which can be viewed in the docket for this rulemaking.

Congressional Review Act (CRA).

This proposed rule is not a major rule under 5 U.S.C. 804(2), the CRA. This proposed rule:

- (a) Would not have an annual effect on the economy of \$100 million or more;
- (b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- (c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA).

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The proposed rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This proposed rule clarifies NPS procedures and does not impose requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

This proposed rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, the proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism

summary impact statement. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This proposed rule complies with the requirements of Executive Order 12988.

This proposed rule:

(a) Meets the criteria of section 3(a) requiring agencies to review all regulations to eliminate errors and ambiguity and write them to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring agencies to write all regulations in clear language and contain clear legal standards.

Consultation with Indian Tribes (Executive Order 13175 and Department Policy).

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175, and has determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.).

This proposed rule contains new information collections. All information collections require approval under the Paperwork Reduction Act (PRA) of 1995. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB must approve the new reporting and recordkeeping requirements identified below:

(1) Solicitation of Proposals - The VEIA requires that the NPS solicit proposals for commercial services contracts through a competitive process. The NPS may also award and administer related professional services contracts. The solicitation process may include one or more phases such as a request for qualifications followed by or in

concert with a request for more detailed information through a request for proposals. The process could also include interviews with respondents and a negotiation phase. The NPS will use the information collected to evaluate and select the best operator to provide the contracted services. Information submitted in response to a solicitation may include, as applicable to the specific project, types of information similar to the following:

- Information concerning the respondent's ability to comply with the commercial service contract terms and conditions;
- Information that demonstrates that the respondent is a qualified entity;
- Information that demonstrates the respondent's experience and prior performance in operating similar facilities and providing similar services;
- Information concerning the respondent's financial capability;
- Information concerning the respondent's proposed approach and methodology to deliver the services specified; and
- Information that the respondent provides in response to other factors identified in the request for proposals.

(2) Reporting Requirements

(A) Commercial Services Operators - In order to monitor their performance and make appropriate NPS management decisions, the NPS will require operators providing commercial services under a VEIA contract to provide information to the NPS through reports and plans such as the following:

- Annual Plan that includes information summarizing prior year operating activities, capital projects and facility condition assessment, and financial performance, and outlining projected annual operating and capital budgets, projected annual operating plans, capital project plans and designs, and staffing and marketing plans;
- Monthly Performance Reports that include monthly financial performance

statements, capital project and operating performance information; and

- Ad hoc Reports such as environmental or safety incidents reports.

The above types of plans and reports to owners (e.g., NPS) are standard for those providing commercial services in the hospitality industry in the private and public sector. The NPS requires financial data be submitted in accordance with Generally Accepted Accounting Principles (GAAP); however, no standardized form or format is defined for any plans or reports at this time. The NPS expects this to evolve over the remaining years of the VEIA and may have forms and formats at a later time. The NPS will obtain OMB approval for any changes in reporting and/or recordkeeping requirements as they are developed.

(B) Professional Services Providers - Professional services providers will be required to provide information to the NPS through deliverables, reports and plans such as the following:

- Operators Annual Plan Review Report analyzing operator prior year performance and operational, capital project and financial plans for the upcoming year;
- Monthly Asset Manager Reports analyzing operator operational, capital project and financial performance; and
- Commercial Services Contract Solicitation Support Deliverables such as financial and business opportunity analysis reports, condition assessment reports, and draft Request for Qualifications/Request for Proposals documents for commercial services contracts.

There is no standard format or form associated with these information requests.

(3) Recordkeeping Requirements - Operators under commercial services contracts and contractors under professional services contracts must keep any records that the Director of the NPS may require for the term of the contract and for five calendar years

after the termination or expiration of the contract to enable the Director to determine that all terms of the contract are or were faithfully performed. The Director, for the purpose of audit and examination, must have access to and the right to examine all pertinent records, books, documents, and papers of the operator, contractor, subcontractor, and any parent or affiliate of the operator or contractor (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the operator or contractor).

Title of Collection: Administration of Visitor Experience Improvements

Authority, 54 U.S.C. 101936.

OMB Control Number: 1024–New.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Business entities desiring to enter VEIA-authorized contracts with the National Park Service.

Total Estimated Number of Annual Respondents: 46 (Commercial Services Operators: 18; Professional Services Providers: 28).

Total Estimated Number of Annual Responses: 100 (Commercial Services Operators: 50; Professional Services Providers: 50).

Estimated Completion Time per Response: Average time (Varies from 24 hours to 800 hours, depending on respondent and/or activity).

Total Estimated Number of Annual Burden Hours: 7,016 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$112,900 (for costs associated with solicitations, start-up costs, and recordkeeping requirements).

As part of our continuing effort to reduce paperwork and respondent burdens, we

invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR-ICCO), 12201 Sunrise Valley Drive, Reston, VA 20191 (mail); or phadrea_ponds@nps.gov (email). Please include "1024-AE47" in the subject line of your comments.

National Environmental Policy Act (NEPA).

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required. The NPS has determined the proposed rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, financial, legal, and technical in nature. In

addition, the environmental effects of this proposed rule are too speculative to lend themselves to meaningful analysis. NPS decisions to enter into contracts under the VEIA will be subject to compliance with NEPA at the time the contracts are executed. The NPS has determined the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211).

This proposed rule is not a significant energy action under the definition in Executive Order 13211; this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and this rule has not otherwise been designated by the Administrator of OIRA as a significant energy action. A Statement of Energy Effects is not required.

Clarity of this Proposed Rule

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)) and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the NPS publishes must:

- (a) Have logical organization;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Have short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe that the NPS has not met these requirements, send comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the proposed rule, your comments should specifically identify where the NPS could improve. For example, you should tell the NPS the numbers of the sections or paragraphs you find unclear, which sections or sentences are too long, the sections where you would find lists or tables useful, etc.

List of Subjects in 36 CFR Part 52

Commercial services, Government contracts, National parks, Visitor services.

In consideration of the foregoing, the National Park Service proposes to add part 52 to title 36 of the Code of Federal Regulations to read as follows:

PART 52—VISITOR EXPERIENCE IMPROVEMENTS AUTHORITY

CONTRACTS

Subpart A—Authority and Purpose

Sec.

52.1 What does this part cover?

52.2 What is the purpose of a commercial services contract?

52.3 How are terms defined in this part?

52.4 What types of commercial services contracts may the Director issue?

52.5 What types of professional services contracts may the Director issue?

Subpart B—Solicitation, Selection, and Award Procedures

52.10 How will the Director solicit responses for the award of a commercial services contract?

52.11 Where will the Director publish notice of the availability of a request for proposals?

52.12 How long will respondents have to submit a response?

52.13 How will the Director share information with potential respondents after issuing the request for proposals?

52.14 How will the Director evaluate responses and select the best one?

52.15 When will the Director reject a response?

52.16 What options does the Director have in accepting or rejecting a response?

52.17 Does this part limit the authority of the Director?

52.18 When must the selected respondent execute the contract?

52.19 When may the Director award the commercial services contract?

52.20 How will the Director solicit and award professional services contracts?

Subpart C—Contract Provisions

52.25 What is the term of a commercial services contract?

52.26 When may the Director terminate a contract?

52.27 May an operator or professional services provider receive leasehold surrender interest in capital improvements?

52.28 Are operator rates subject to approval by the Director?

52.29 May operators assign or encumber commercial services contracts?

52.30 How may commercial services contracts be funded?

Subpart D—Information and Access to Information

52.35 What records must the operator and professional services provider keep and what access does the Director have to records?

52.36 What access does the Comptroller General have to records kept by operators and professional services providers?

Subpart E—Miscellaneous

52.40 Does this part affect concession contracts under part 51 of this chapter?

52.41 Does the VEIA expire?

52.42 Severability.

Authority: 54 U.S.C. 101931-101938.

Subpart A—Authority and Purpose

§ 52.1 What does this part cover?

This part covers the solicitation, award, and administration of commercial services contracts and related professional services contracts. The Director solicits, awards, and administers these contracts on behalf of the Secretary of the Department of the Interior under the authority of the Act of August 25, 1916, as amended and

supplemented, 54 U.S.C. 100101 *et seq.*, and Title VII of the National Park Service Centennial Act, 54 U.S.C. 101931–101938. All commercial services contracts and related professional services contracts must be consistent with the requirements of this part. These contracts will contain such terms and conditions as required by this part or law and as otherwise appropriate in furtherance of the purposes of this part and the Visitor Experience Improvements Authority (VEIA).

§ 52.2 What is the purpose of a commercial services contract?

The National Park Service (NPS) will use commercial services contracts to expand, modernize, and improve the condition of commercial facilities and commercial services provided to visitors in a park area. Commercial services contracts are limited to those that are necessary and appropriate for public use and enjoyment of the park area in which they are located and consistent with the preservation and conservation of the resources and values of the park area.

§ 52.3 How are terms defined in this part?

Award occurs when the Director and a selected respondent execute a commercial services contract or related professional services contract that creates legally binding obligations on the parties to the contract.

Commercial services contract means a binding written agreement between the Director and an operator awarded under the authority of this part that authorizes the operator to provide services to visitors within a park area under specified terms and conditions.

Contract means either a commercial services contract or a related professional services contract issued under the authority of this part. The Director may award contracts without regard to Federal laws and regulations governing procurement by Federal agencies, with the exception of laws and regulations related to Federal Government contracts governing working conditions and wage rates, including the

Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*), 40 U.S.C. 3141–3144, 3146, and 3147 (commonly known as the “Davis-Bacon Act”), and any civil rights provisions otherwise applicable thereto. Contracts as defined in this section are not contracts within the meaning of 41 U.S.C. 601 *et seq.* (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations, or policies that apply only to Federal service contracts or other types of Federal procurement actions.

Director means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part.

Operator means an individual, corporation, or other legally recognized entity that duly holds a commercial services contract.

Professional services contract means a binding written agreement between the Director and a professional service provider awarded under the authority of this part that authorizes the service provider to provide hospitality consulting or other services to the National Park Service related to commercial services contracts.

Professional services provider means an individual, corporation, or other legally recognized entity that duly holds a professional services contract.

Qualified entity means an individual, corporation, or other legally recognized entity that the Director determines has the experience and financial ability to carry out the terms of a commercial services contract or professional services contract.

Respondent means an individual, corporation, or other legally recognized entity, that submits a response for a commercial services contract.

Response means the information an individual, corporation, or other legally recognized entity provides to the National Park Service in response to a request for proposals.

VEIA means the authority granted to the Director under Title VII of Public Law 114-289 entitled “Visitor Experience Improvements Authority” and codified at 54 U.S.C. 101931–101938.

Visitor services means accommodations, facilities, and other services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by an individual or entity other than the Director. Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

§ 52.4 What types of commercial services contracts may the Director issue?

The Director may issue commercial services contracts for expanding, modernizing, and improving visitor services consistent with the VEIA. Examples of such contracts include, without limitation, management agreements and visitor services percentage lease agreements (referred to as “percentage agreements” for purposes of this part).

§ 52.5 What types of professional services contracts may the Director issue?

The Director may issue professional services contracts that support the National Park Service in soliciting, executing, and managing commercial services contracts. Professional services contracts may include asset management agreements under which a service provider assists the National Park Service in overseeing and administering commercial services contracts but does not itself provide visitor services. Professional services contracts also may include contracts for the provision of other consulting services to the National Park Service such as developing requests for proposals, condition assessments, operational or financial analysis, accounting, and other related services.

Subpart B—Solicitation, Selection, and Award Procedures

§ 52.10 How will the Director solicit responses for the award of a commercial services contract?

(a) The Director will award commercial services contracts through a competitive selection process. The Director will issue a request for proposals inviting responses for consideration by the Director. The request for proposals will describe the terms and conditions of the proposed commercial services contract and the procedures the Director will follow to negotiate and award the commercial services contract.

(b) The terms and conditions of the request for proposals and the proposed commercial services contract are not final until the Director awards the commercial services contract.

(c) The solicitation process may include one or more phases, such as a request for qualifications followed by or in concert with a request for more detailed information through a request for proposals. The process could also include interviews with respondents and a negotiation phase.

(d) If the entity that will become the operator is not established at the time of submission of a response, the response must contain assurances satisfactory to the Director that the entity that will become the operator will be a qualified entity as of the date of the award of the commercial services contract and otherwise have the ability to carry out the commitments made in the response.

§ 52.11 Where will the Director publish notice of the availability of a request for proposals?

(a) The Director will publish notice of the availability of the request for proposals at least once in the System for Award Management (SAM) where Federal business opportunities are electronically posted or in a similar publication if SAM is no longer used. The Director may also publish notices electronically on websites, including social media, and in local or national newspapers or trade magazines.

(b) The Director will make the request for proposals available upon request to all interested persons. The Director may charge a reasonable fee for a printed request for proposals.

§ 52.12 How long will respondents have to submit a response?

The Director will define the process and the timeline for responding and entering into negotiations in the request for proposals. The Director will not consider untimely responses.

§ 52.13 How will the Director share information with potential respondents after issuing the request for proposals?

If the Director shares material information directly related to the request for proposals with one potential respondent, the Director will share the same information with all potential respondents who have advised the Director of their interest in the request for proposals. This does not apply to publicly available information.

§ 52.14 How will the Director evaluate responses and select the best one?

(a) The Director will apply the selection factors set forth in the request for proposals. The evaluation will include an assessment of the respondent's written submittals in response to the request for proposals and may also include information presented by the respondent during request for qualifications, interview, and negotiation phases. During this process, the Director may request written clarifications from any respondent that has submitted a timely response.

(b) The Director will use selection factors to evaluate responses that include compliance with the requirements in the request for proposals, ability to comply with the terms and conditions of the commercial services contract, a demonstration that the respondent is a qualified entity, demonstrated experience and prior performance in operating similar facilities and providing similar services, financial capability, and the proposed approach and methodology to deliver the services specified. The Director may

include other factors that are identified in the request for proposals.

(c) The Director must determine that the commercial services contract issued to the selected respondent will meet the objectives of expanding, modernizing, and improving the condition of commercial facilities and commercial services provided to visitors in the park area.

§ 52.15 When will the Director reject a response?

The Director will reject any response if the Director makes any of the following determinations:

(a) The respondent is not a qualified entity.

(b) The response is not responsive to the requirements in the request for proposals. A response is not responsive if the Director determines that it is not timely, does not meet the minimum requirements of the proposed contract, or does not provide the information required by the request for proposals.

§ 52.16 What options does the Director have in accepting or rejecting a response?

(a) If no responsive responses are submitted, the Director may cancel the solicitation. After cancellation, the Director may establish new commercial services contract requirements and issue a new request for proposals.

(b) The Director reserves the right to accept or reject any or all responses received as a result of the solicitation, to waive minor irregularities, or to negotiate with any respondent, in any manner necessary, to serve the best interests of the National Park Service.

(c) No respondent or other person or entity will obtain compensable or other legal rights as a result of an amended, extended, canceled, or resolicited request for proposals for a contract.

§ 52.17 Does this part limit the authority of the Director?

Nothing in this part may be construed as limiting the authority of the Director at

any time to determine whether to solicit or award a contract, to cancel a solicitation, or to terminate a contract in accordance with its terms.

§ 52.18 When must the selected respondent execute the contract?

The selected respondent must execute the contract within the time period established by the Director. If the selected respondent fails to execute the contract in this period, the Director may select another responsive response and enter into negotiations with that respondent, or may cancel the solicitation and choose to resolicit the contract.

§ 52.19 When may the Director award the commercial services contract?

The Director may award a commercial services contract at any time after selecting the best response, the conclusion of negotiations, and execution of the contract by the respondent.

§ 52.20 How will the Director solicit and award professional services contracts?

The Director will advertise opportunities for professional services contracts at least once in the System for Award Management (SAM) where Federal business opportunities are electronically posted or in a similar publication if SAM is no longer used. The Director may also publish notices electronically on websites, including social media, and in local or national newspapers or trade magazines. The Director will evaluate and select professional services providers that are qualified entities following the procedures described in the advertised opportunity.

Subpart C—Contract Provisions

§ 52.25 What is the term of a commercial services contract?

A commercial services contract will generally be awarded for a set term or for a base term plus option years, with the total term not to exceed 10 years.

§ 52.26 When may the Director terminate a contract?

Contracts will contain appropriate provisions for suspension of operations and for termination by the Director for default, including, without limitation, unsatisfactory

performance, or termination when necessary to achieve the purposes of the VEIA.

§ 52.27 May an operator or professional services provider receive leasehold surrender interest in capital improvements?

No. Operators and professional services providers will not receive leasehold surrender interest in capital improvements, as those terms are defined at 54 U.S.C. 101915.

§ 52.28 Are operator rates subject to approval by the Director?

(a) The Director may require prior approval of rates for services provided to visitors under a commercial services contract.

(b) Generally, the Director will approve rates for services provided to visitors based upon market demand, although the Director may specify rates or rate methods for particular services based on factors other than market demand, such as to ensure affordability to a broad segment of visitors.

§ 52.29 May operators assign or encumber commercial services contracts?

Commercial services contracts will include provisions that require the Director's approval prior to any assignment or encumbrance of the contract or any rights or interests under the contract to another operator.

§ 52.30 How may commercial services contracts be funded?

(a) Commercial services contracts may use either of the following two funding structures:

(1) Contract funds will be maintained in a Federal account and operators will be provided ready access to those funds to pay for agreed-upon expenses; or

(2) Contract funds will be provided to the operators, who will be solely responsible for maintaining and expending the funds on agreed-upon expenses.

(b) Commercial services contracts will clearly define what contract-related funds shall be considered revenue collected for the NPS and will provide for the periodic

remittance of such funds to the NPS.

Subpart D—Information and Access to Information

§ 52.35 What records must the operator and professional services provider keep and what access does the Director have to records?

Operators and professional services providers must keep any records that the Director may require for the term of the contract and for five calendar years after the termination or expiration of the contract to enable the Director to determine that all terms of the contract are or were faithfully performed. The Director, or an authorized representative of the Director, may access and examine all pertinent records, books, documents, and papers of the operator, professional services provider, and any subcontractor, parent, or affiliate of the operator or professional services provider (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the operator or professional services provider).

§ 52.36 What access does the Comptroller General have to records kept by operators and professional services providers?

The Comptroller General of the National Park Service, or an authorized representative of the Comptroller General, may access and examine all pertinent records, books, documents, and papers of the operator, professional services provider, and any subcontractor, parent, or affiliate of the operator or professional services provider (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the operator or professional services provider) going back five years from the closing date of the last fiscal year of the operator or professional service provider.

Subpart E—Miscellaneous

§ 52.40 Does this part affect concession contracts under part 51 of this chapter?

No, nothing in this part modifies the terms or conditions of any existing concession contract or the ability of the Director to enter into concession contracts under part 51 of this chapter. The 1998 Act (as that term is defined in part 51 of this chapter) remains in effect.

§ 52.41 Does the VEIA expire?

Yes. The Director may not award a contract under the VEIA after December 16, 2023.

§ 52.42 Severability.

A determination that any provision of this part is unlawful will not affect the validity of the remaining provisions.

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